

EXHIBIT E-4

303. ~~269.~~ The NFLPA's actions have resulted in serious, substantial, material harm

to Johnson and his rights and interests.

NINTH CAUSE OF ACTION Violations of the LMRDA against the NFLPA

304. ~~270.~~ Johnson incorporates by reference the averments of the preceding paragraphs, as if fully restated herein.

305. ~~271.~~ The NFLPA refused to abide by the Bill of Rights of Union Member under the LMDRA by depriving Johnson of his right to receive and inspect the operative collectively bargained agreement.

306. ~~272.~~ The NFLPA and NFLMC both have claimed to have modified substantive provisions in the 2015 Policy affecting the terms and conditions of Johnson's employment and the employment of all other active-player members of the NFLPA.

307. Johnson requested of the NFLPA these purported modifications to the collectively bargained 2015 Policy.

308. ~~273.~~ The NFLPA has refused to share with Johnson these purported modifications to the collectively bargained 2015 Policy.

309. ~~274.~~ The purported modifications to the 2015 Policy directly affect significant rights afforded Johnson and all members of the NFLPA.

310. ~~275.~~ The NFLPA refused to provide Johnson with all the side agreements, modifications, deviations, etc. to the 2015 Policy, which are part of the collectively bargained agreement.

311. Upon requesting one of these side agreements, modifications, deviations, etc. from the NFLPA, the NFLPA told Johnson that he should obtain it from the NFLMC. The NFLMC refused to provide it to Johnson.

312. The NFLPA never provided players the version of the 2015 Policy it claimed applied to Johnson. Instead, the NFLPA placed a different version of the 2015 Policy on the

Case 1:17-cv-01307-DWM Document 1-1 Filed 02/28/19 Page 3 of 11
NFLPA's website, which it never changed. Despite substantial modifications to the 2015 Policy, the NFLPA did not update the 2015 Policy available on its website or otherwise notify its player- members of the modifications.

313. ~~276.~~ To this day, the NFLPA has not apprised Johnson of the entirety of the terms of the 2015 Policy.

314. ~~277.~~ The NFLPA ~~disciplined or otherwise retaliated~~'s misconduct, as detailed herein, constitutes discipline or retaliation against Johnson for asserting his rights under the LMRDA.

315. ~~278.~~ The NFLPA's actions have resulted in serious, substantial, material harm to Johnson and his rights and interests.

TENTH CAUSE OF ACTION
Breach of Duty of Fair Representation by the NFLPA
Pursuant to the LMRA § 301 and NLRA § 8(b)

316. Johnson incorporates by reference the averments of the preceding paragraphs, as if fully restated herein.

317. On February 6, 2017, the NFLPA filed a Memorandum in Opposition to Plaintiff's Motion to Vacate Arbitration Award (Doc. No. 33) ("Opposition").

318. In its Opposition, the NFLPA states that it represents Johnson under the 2015 Policy.

319. In its Opposition, the NFLPA admits that it waived any conflicts of interest relative to Carter serving as an arbitrator under the 2015 Policy.

320. In its Opposition, the NFLPA demonstrates its knowledge that the NFLMC retained WilmerHale to investigate its activities relative to its investigation of the Ray Rice matter.

321. The NFLPA also knew that the 2015 Policy contained an express requirement the 2015 Policy required a minimum of three arbitrators, required that those arbitrators not be affiliated with the NFL, NFLPA, or NFL clubs, and that the Notice Arbitrator be selected by

322. In its Opposition, the NFLPA admits that in 2014, the NFLPA successfully negotiated for neutral arbitration of player appeals under the 2015 Policy and that this was “a significant achievement for the players and their Union.” Doc. No. 2 at 1335.

323. Nevertheless and in direct contravention of the 2015 Policy, the NFLPA admits that at the time of Carter’s appointment, it knew that WilmerHale was affiliated with the NFL, NFLPA, or NFL clubs.

324. Pursuant to its Constitution, the NFLPA never sought approval from the members of the NFLPA or from the Executive Committee of the NFLPA to modify the 2015 Policy to allow Carter’s appointment.

325. Throughout the entirety of the proceedings, Johnson questioned the arbitrator selection provisions in the 2015 Policy but was denied access to such information in discovery. Nevertheless, Johnson objected to Carter’s service as the arbitrator in the discovery hearing and incorporated that objection during the appeal hearing.

326. Moreover, on September 21, 2016, the NFLPA stated the following to Johnson: “the player doesn’t have any selection or approval ‘rights’ regarding which arbitrator is available to conduct the in-person proceedings.”

327. As of September 21, 2016, the NFLPA knew Carter also was assigned to hear appeals under the NFLMC and the NFLPA’s separate and distinct Policy and Program on Substances of Abuse.

328. The NFLPA knew that such dual designation violated the express terms of the 2015 Policy. This information was never disclosed to Johnson.

329. As a result, the NFLPA was charged with ensuring that arbitrators were selected in accord with the 2015 Policy.

330. The NFLPA acted disloyally, in bad faith, and arbitrarily and capriciously. The NFLPA’s actions were so far outside the widest range of reasonableness for a union’s conduct

331. The NFLPA's actions and/or omissions substantially tainted, contributed to, and more than likely affected the erroneous Award.

332. The NFLPA's actions have resulted in serious, substantial, material harm to Johnson and his rights and interests.

ELEVENTH CAUSE OF ACTION

Request for Declaratory Judgment under 28 U.S.C. § 2201

333. ~~279.~~ Johnson incorporates by reference the averments of the proceeding paragraphs, as if fully restated herein.

334. ~~280.~~ Johnson's July 12, 2016 test violated the express terms of the 2015 Policy.

335. ~~281.~~ The 2015 Policy expressly requires that Defendants maintain no fewer than three arbitrators to hear appeals.

336. ~~282.~~ The 2015 Policy expressly requires that one of the arbitrators is designated as the "Notice Arbitrator" and that the Notice Arbitrator assign arbitrators to cover every Tuesday of the playing season through the Super Bowl.

337. ~~283.~~ Upon information and belief, there were fewer than three arbitrators to hear appeals under the 2015 Policy.

338. ~~284.~~ Upon information and belief, there was not a properly seated Notice Arbitrator as required by the express written terms of the 2015 Policy.

339. ~~285.~~ Upon information and belief, arbitrators were not assigned to hear appeals per the express written terms of the 2015 Policy.

340. ~~286.~~ A real and justiciable controversy exists between Johnson on one hand and the Defendants on the other concerning whether the Defendants ongoing failure and/or refusal to comply with the arbitrator appointment and assignment terms of the 2015 Policy breaches the 2015 Policy.

341. ~~287.~~ A real and justiciable controversy exists between Johnson on one hand and

342. Since the penalties under the 2015 Policy and its predecessor and successor policies are cumulative (i.e., they are successive and become more severe in their progression), the harm imposed by Defendants' conduct continues until this day.

343. The NFLPA violated its Constitution by failing to ratify changes to the 2015 Policy to the ongoing detriment of Johnson and other NFLPA player-members.

344. 288. Defendants' breach of the 2015 Policy caused significant loss of income and due process rights to Johnson and denied Johnson protections to which he was entitled.

345. 289. Pursuant to 28 U.S.C. § 2201, Johnson is entitled to a declaratory judgment that:

- a. Johnson's July 12, 2016 test violated the express terms of the 2015 Policy, and the NFLMC cannot discipline Johnson for this unauthorized and improper July 12, 2016 test;
- b. Defendants violated the 2015 Policy's requirements regarding appointment and assignment of arbitrators;
- c. Defendants did not properly seat any arbitrators under the 2015 Policy and that all decisions by such purported arbitrators are null and void;
- d. Defendants did not seat properly Carter to hear Johnson's appeal;
- e. The NFLPA breached its duty of fair representation by not ensuring the requisite number of unaffiliated arbitrators under the 2015 Policy.
- f. ~~e.~~ Carter was not designated properly to hear Johnson's appeal;
- g. ~~f.~~ Defendants did not properly seat a Notice Arbitrator under the 2015 Policy;
- h. ~~g.~~ Defendants did not provide Johnson with information that he was entitled to under the 2015 Policy;
- i. ~~h.~~ Defendants improperly eliminated or effectively eliminated the

CFT position;

j. Defendants did not approve, have, or create the Section 16

Procedures required by the 2015 Policy;

k. The NFLPA violated and continues to violate its Constitution by enforcing and allowing the NFLMC to enforce policies, including, but not limited to, its policy on performance-enhancing substances, that the NFLPA has not properly ratified; and

l. Defendants arbitrarily and capriciously administered the 2015 Policy to the detriment of all National Football League players.

PRAYER FOR RELIEF

Johnson prays for the following relief:

- a. The declaratory judgment detailed above;
- b. A judgment in Johnson's favor as to all the causes of action included herein;
- c. A judgment granting Johnson's petition to vacate the Award;
- d. Removal of Johnson from the National Football League Policy on Performance-Enhancing Substances' reasonable cause testing program;
- e. Return of Johnson to the discipline step or position he was in under the National Football League Policy on Performance-Enhancing Substances prior to Birch's September 6, 2016 discipline letter;
- f. Compensation for the damages Johnson has suffered or will suffer as a result of Defendants' actions as described herein and the Award, which exceeds \$75,000.00;
- g. Reversal of any damages caused by the improper Award, including, but not limited to, reinstatement of Johnson's contractual guarantees set forth in his NFL Player Contract;
- h. Punitive damages;

- i. A judgment requiring Defendants to pay Johnson's costs and attorneys' fees associated with the underlying appeal of Johnson's discipline;
- j. A judgment requiring Defendants to pay Johnson's costs and attorneys' fees associated with this litigation; and
- k. Any other legal or equitable relief, which this Honorable Court deems just, equitable, and proper.

Respectfully submitted,

ZASHIN & RICH CO., L.P.A.

s/ Stephen S. Zashin

Stephen S. Zashin ~~-OH- (#0064557)-~~
ssz@zrlaw.com

Patrick J. Hoban ~~-OH- (#0079794) -~~
pjh@zrlaw.com

David R. Vance ~~(#0083842) - OH-~~
~~#083842~~drv@zrlaw.com ~~Ernst & Young Tower~~
[950 Main Avenue, 4th Floor](#)
[Cleveland, OH 44113](#)
[Telephone: \(216\) 696-4441 Facsimile: \(216\) 696-1618](#)

Attorneys for Plaintiff,
David Lane Johnson

CERTIFICATE OF SERVICE

The undersigned certifies that on February 14, 2017 the foregoing was filed using the Court's CM/ECF system. All parties and counsel of record will receive notice and service of this document through the Court's CM/ECF electronic filing system.

s/ Stephen S. Zashin

Stephen S. Zashin (#0064557) - ssz@zrlaw.com

Patrick J. Hoban (#0079794) - pjh@zrlaw.com

David R. Vance (#0083842) - drv@zrlaw.com

ZASHIN & RICH CO., L.P.A.

950 Main Avenue, 4th Floor

Cleveland, OH 44113

Telephone: (216) 696-4441 Facsimile: (216) 696-1618

Attorneys for

Plaintiff/Movant,

David Lane Johnson

Document comparison by Workshare Compare on Sunday, January 27, 2019
10:06:17 PM

Input:	
Document 1 ID	file:///\\nyhome\\home-ny\$\\bgordon\\Desktop\\Case Files\\Lane Johnson NFLPA Case\\Answer to First Amended Complaint\\Johnson v NFLPA and NFL - Original Complaint.pdf
Description	Johnson v NFLPA and NFL - Original Complaint
Document 2 ID	file:///\\nyhome\\home-ny\$\\bgordon\\Desktop\\Case Files\\Lane Johnson NFLPA Case\\Answer to First Amended Complaint\\First Amended Complaint (ECF 39).pdf
Description	First Amended Complaint (ECF 39)
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	876
Deletions	638
Moved from	1
Moved to	1
Style change	0

Format changed	0
Total changes	1516